

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JOYCE HICKS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	2:05-CV-1503-RCJ-GWF
	)	
vs.	)	<b>ORDER</b>
	)	
CITY OF NORTH LAS VEGAS, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

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This matter coming before the Court on Defendants’ Motion to Dismiss (#22). The Court has considered the Motion, the pleadings on file, and oral argument on behalf of all parties. IT IS HEREBY ORDERED that Defendants’ Motion to Dismiss (#22) is *denied*.

**BACKGROUND**

Joyce Hicks (“Plaintiff”) claims that her son, Daryl Hicks, fell ill on December 16, 2003. As a result, Plaintiff called 911 in order to procure medical assistance for him. After Mr. Hicks voiced a fear that the North Las Vegas Police Department (“NLVPD”) might kill him if they responded to the call, Plaintiff claims that she informed the 911 dispatcher that there was no need for police presence. Mr. Hicks then ran from the house, apparently nude,

1 in fear that the police might respond to his mother's call. The NLVPD apparently discovered  
2 the dispatch of an ambulance to the Hicks residence. According to Plaintiff, the NLVPD  
3 dispatched several officers, informing them only that "an unidentified black male was  
4 perceived to be nude while running along Hassell Avenue, located in the City of North Las  
5 Vegas." (2d Am. Compl. ¶ 76.)

6 After verbally confronting Plaintiff, who was looking for her son outside of her home,  
7 the NLVPD saw a group of people, one of whom was covering a nude male with a jacket.  
8 The officers allegedly threatened to use deadly force on the group if they would not put their  
9 hands up. Mr. Hicks then ran into his grandmother's residence, which was located nearby.  
10 According to Plaintiff, at the officers' demand, Mr. Hicks exited his grandmother's residence  
11 and surrendered himself to the police.

12 Plaintiff claims that several officers violently apprehended Mr. Hicks after his  
13 surrender, handcuffed him, and used force, possibly including a choke hold, to immobilize  
14 Mr. Hicks face down. Mr. Hicks died later that night. The death certificate, which was  
15 released on February 12, 2004, indicated that Mr. Hicks died from asphyxiation.

16 Plaintiff was informed of her son's death early the following morning, on December  
17 17, 2003. Two years and two days later, she filed a complaint on behalf of her son and  
18 herself against Defendants regarding the incident. Defendants now move the Court to  
19 dismiss Plaintiff's Second Amended Complaint (#19) under Federal Rule of Civil Procedure  
20 12(b)(6) for failure to state a claim upon which relief can be granted, because Plaintiff filed  
21 her complaint after the expiration of a two-year statute of limitations.

## 22 DISCUSSION

### 23 I. Rule 12(b)(6) Standard

24 A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is a

1 challenge by the moving party that, on the face of the pleadings, the nonmoving party cannot  
2 prevail as a matter of law because the allegations do not assert a cause of action cognizable  
3 under federal law. See, e.g., Conley v. Gibson, 355 U.S. 41, 45–46 (1957).

4 Dismissal for failure to state a claim under Rule 12(b)(6) is proper only if it is beyond  
5 doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the  
6 plaintiff to relief. See Williamson v. Gen. Dynamics Corp., 208 F.3d 1144, 1149 (9th Cir.  
7 2000). The review is limited to the complaint, and all allegations of material fact are taken as  
8 true and viewed in the light most favorable to the plaintiff. In re Stac Elecs. Sec. Litig., 89  
9 F.3d 1399, 1403 (9th Cir. 1996). Although a court should assume the factual allegations to  
10 be true, courts should not “assume the truth of legal conclusions merely because they are cast  
11 in the form of factual allegations.” W. Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir.  
12 1981).

## 13 **II. Statute of Limitations**

14 Plaintiff’s claims consist of civil rights violations under 42 U.S.C. § 1983. (See 2d  
15 Am. Compl. ¶¶ 1, 23.) Although § 1983 itself does not define a limited period in which to  
16 bring claims, it is limited by the state statute governing the cause of action. See Wilson v.  
17 Garcia, 471 U.S. 261 (1985). Nevada mandates a two-year statute of limitations for personal  
18 injury actions, and the Ninth Circuit has limited actions brought under § 1983 in Nevada to  
19 this two-year period. See Perez v. Seevers, 869 F.2d 425, 426 (9th Cir. 1989); Nev. Rev.  
20 Stat. 11.190.4(e). State law also governs tolling of the statute of limitations to the extent the  
21 state tolling rules are not inconsistent with federal law. Morales v. City of Los Angeles, 214  
22 F.3d 1151, 1155 (9th Cir. 2000).

23 Federal law determines when a civil rights action accrues, with the “clock” starting  
24 when the plaintiff “knows or has reason to know of the injury which is the basis of the

1 action.” Elliot v. City of Union City, 25 F.3d 800, 801–02 (9th Cir. 1994). The parties do  
2 not dispute the application of a two-year statute of limitations, but they dispute when Plaintiff  
3 had reason to know of the injuries underlying her claims. Plaintiff does not allege that tolling  
4 rules should apply.

5 **III. Date of Accrual**

6 On behalf of her son, Plaintiff claims that Defendants are liable for deliberate  
7 indifference to the serious medical needs of her son, for failure to train, investigate and  
8 discipline the officers who caused her son’s death, and for unreasonable seizure and use of  
9 excessive force. On her own behalf, Plaintiff claims that Defendants are liable for the loss of  
10 her right to enjoy the society of her son.

11 Plaintiff argues that the statute of limitations did not begin to run until she obtained  
12 the necessary facts supporting the legal substance of her claim, namely that the NLVPD  
13 might have been involved in her son’s death. Under that reasoning, the statute of limitations  
14 would have begun to run, at the earliest, when Plaintiff received her son’s death certificate,  
15 on February 12, 2004, which contained a determination that Mr. Hicks died of asphyxiation.

16 Defendants assert that Plaintiff knew of the injury on which her lawsuit is based—the  
17 death of her son—on, at the latest, December 17, 2003. Accordingly, Defendants state that  
18 Plaintiff had to file her complaint by December 17, 2005. Because Plaintiff did not file her  
19 complaint until December 19, 2005, Defendants argue that the statute of limitations bars her  
20 claims, and thus the Court must dismiss them. Defendants argue that Plaintiff is asserting  
21 that her claim accrued at the time she knew the *cause* of her son’s injury, rather than the time  
22 at which she knew of the injury itself.

23 The statute of limitations begins to run when the plaintiff “knows or has reason to  
24 know of the injury which is the basis of the action.” Elliot, 25 F.3d at 801–02. In this case, it

1 is undisputed that Plaintiff knew of her son's death by December 17, 2003. However, this  
2 does not necessarily mean that the limitations period began to run on that date. Plaintiff did  
3 not become aware of the legal or constitutional injury that forms the basis for her suit until  
4 she had reason to suspect that the police officers played a role in her son's death. Mere  
5 knowledge that her son died is insufficient to notify Plaintiff of her legal cause of action.  
6 Plaintiff claims that she was not aware of the constitutional injury until she received the death  
7 certificate on February 12, 2004, which indicated that her son died of asphyxiation.

8 Defendants argue that Plaintiff had reason to know on the night of the incident, or at  
9 least the following day, that the NLVPD might have been involved in her son's death.  
10 Defendants claim that Plaintiff had reason to know that her son might have died at the hands  
11 of the NLVPD on December 17, 2003, because she witnessed the entire encounter between  
12 her son and the officers. However, read in the light most favorable to Plaintiff, the complaint  
13 does not conclusively establish that Plaintiff witnessed the arrest.

14 While it is clear that Plaintiff was in the vicinity, the Court cannot conclusively  
15 determine from the allegations in the complaint that Plaintiff (or anyone else) actually saw  
16 the physical interaction between Mr. Hicks and the police. The Court might agree with  
17 Defendants that the limitations period started on December 17, 2003, if Plaintiff witnessed  
18 the entire arrest. However, at this stage of the litigation, the Court is unable to find that  
19 Plaintiff witnessed the arrest, and thus knew of the legal cause of action immediately.  
20 Whether Plaintiff saw the physical encounter between her son and the officers remains an  
21 issue of fact, and thus dismissal is inappropriate.

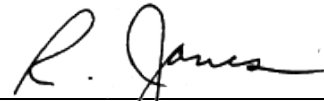
22 The Court makes no ruling on whether the statute of limitations expired before  
23 Plaintiff filed her complaint. If Plaintiff sufficiently witnessed the actions of the officers  
24 during the arrest so as to make her immediately aware of her legal cause of action, her

1 complaint is probably untimely. If not, Plaintiff likely filed her complaint within the  
2 statutory period because mere knowledge of her son's death would not put Plaintiff on notice  
3 of her legal cause of action, and thus would not trigger the limitations period. Because the  
4 Court is unable to conclusively resolve this factual issue at the current stage of the litigation,  
5 dismissal is inappropriate.

6 **CONCLUSION**

7 IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (#22) is *denied*.

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10 DATED: August 31, 2006.

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15 ROBERT C. JONES  
16 UNITED STATES DISTRICT JUDGE  
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